

Criminal Revision
Present: The Hon'ble Justice Ashim Kumar Roy
Judgment On :16-06-2010.
C.R.R. No. 1540 of 2010

Sri Swapan Das
versus
The State of West Bengal & Anr.

POINTS

MAINTENANCE – Maintenance proceeding is pending – Wife living adulterous life – Whether she is entitled to any maintenance– Code of Criminal Procedure 1973, Ss 125 & 127.

FACTS

Petitioner/husband has failed to pay maintenance in terms of the order passed by the Learned Judicial Magistrate, 3rd Court at Sealdah, the wife/opposite party moved an application before the Learned Court for enforcement of such order and for recovery of the arrear maintenance. Subsequent to the passing of the order of maintenance, husband came to learn that his wife was leading an adulterous life and accordingly he moved an application in connection with the pending maintenance proceeding for vacating of such order of payment of interim maintenance, but the Learned Court rejected such application. In the meantime, the wife/opposite party filed an application before the Court below for realization of arrear maintenance. The husband/petitioner also moved another application under Section 127 of the Code of Criminal Procedure for cancellation of order of maintenance, which is still pending. Since the Learned Court below issued D/W against the present petitioner for recovery of the arrear maintenance in connection with the Execution case, the petitioner has moved this criminal revision.

HELD

When the main maintenance proceeding is still pending and in the said proceeding the rights and liabilities of the parties have not yet been determined, the question whether she is entitled to any maintenance or not, on the ground of living adulterous life should not be decided in any other co-lateral proceeding except in main maintenance proceeding. Para 3

If there is any single default on the part of the petitioner in complying the order as aforesaid the interim order shall stands automatically vacated without any further reference to this Court.

Para 6

For Petitioner : Mr. Anil Sharma

THE COURT

1. In connection with a proceeding under Section 125 of the Code of Criminal Procedure by an order passed on November 19, 2008 the Learned Court below directed the petitioner/husband to pay an interim maintenance to the wife/opposite party @ Rs. 1,500/- per month. Since the petitioner/husband has failed to pay maintenance in terms of the said order the wife/opposite party moved an application before the Court below for enforcement of such order and for recovery of the arrear maintenance of Rs. 18,000/-.

2. It is the case of the petitioner that subsequent to the passing of the order of maintenance, sometime in June, 2009, he came to learn that his wife was leading an adulterous life with one Raju Das and accordingly he moved an application in connection with the pending maintenance proceeding for vacating of such order of payment of interim maintenance, but the

Learned Court below rejected such application on August 13, 2009. In the meantime, the wife/opposite party filed the aforesaid application before the Court below for realization of arrear maintenance and Misc. Execution Case No. 4 of 2009 was registered, when the husband/petitioner moved another application under Section 127 of the Code of Criminal Procedure for cancellation of order of maintenance, which is still pending.

Since the Learned Court below issued D/W against the present petitioner for recovery of the arrear maintenance in connection with the Execution case, the petitioner has moved this criminal revision.

3. In my view, when the main maintenance proceeding is still pending and in the said proceeding the rights and liabilities of the parties have not yet been determined, the question whether she is entitled to any maintenance or not, on the ground of living adulterous life should not be decided in any other co-lateral proceeding except in main maintenance proceeding.

4. For the reasons stated above, I do not find any merit in this criminal revision and accordingly same stands dismissed. But, I am of the opinion it would be expedient in the interest of justice the main maintenance matter which is pending since 2007 be disposed of at once, accordingly the Learned Court below is directed to conclude the main maintenance proceeding as expeditiously as possible preferably within three months from the date of communication of this order. It is further directed the Learned Magistrate shall proceed with the case on day to day basis and must not grant any adjournment to either of the parties unless the Court finds the same is necessary for ends of justice.

5. It is further directed all further proceedings in connection with Misc. Execution Case No. 4 of 2009 pending before the Learned Judicial Magistrate, 3rd Court at Sealdah, shall remain stayed for a period of six months from this date, on condition that the petitioner/husband shall pay a sum

of Rs. 6,000/- within 10 days from this date and shall liquidate the balance arrear amount in five monthly equal instalments and be paid along with the current maintenance.

6. Needless to mention, if there is any single default on the part of the petitioner in complying the order as aforesaid the interim order shall stand automatically vacated without any further reference to this Court.

7. I make it clear, I have not gone into the merits of this case and it shall be open to the petitioner to raise all the points taken in this matter to prove its case in accordance with law.

8. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)